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SERVICE DATE - MARCH 19, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33950

JEFFERSON TERMINAL RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
CROWN ENTERPRISES, INC.

Decided: March 15, 2001

We are granting the petition of the City of Detroit (the City) to reopen and to revoke the notice of exemption filed in this proceeding by the Jefferson Terminal Railroad Company (Jefferson).

BACKGROUND

By notice filed on October 19, 2000, and published in the Federal Register on November 7, 2000, at 65 FR 66802, Jefferson invoked our class exemption at 49 CFR 1150.31 to acquire from Crown Enterprises, Inc. (Crown) and to operate[1] what it describes as approximately 1.2 miles of rail line in Detroit, MI, identified by Jefferson as the Conrail Shared Assets Dearborn Division Terminal East Branch.[2] Crown, the corporate parent of Jefferson, acquired this track when it purchased a parcel of land[3] from the Chrysler Corporation in 1994. Crown filed articles of incorporation for Jefferson with the State of Michigan on October 17, 2000, and on that same date quit-claimed its interest in the property to Jefferson. Two days later Jefferson filed its Notice of Exemption (notice) with the Board.

When Jefferson filed its notice, the parcel of land that includes this track was the subject of a condemnation action that the City had begun on April 18, 2000. However, Jefferson's

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[1] To allow it to commence operations, Jefferson states that it asked Consolidated Rail Corporation (Conrail), under 49 U.S.C. 11103, to reopen a switch connecting the track at issue with lines operated by Conrail. Jefferson does not indicates how Conrail responded.

[2] The boundaries are described in greater detail in the notice. The track is located in the rail complex formerly known as the River Yard.

[3] Crown apparently acquired two adjacent parcels of land consisting of a total of 71 acres, which it claims are traversed by rail lines that have historically been used for the provision of rail transportation services. The track at issue here is located on a 19-acre parcel. See page 3 of Attachment C to the City's December 15, 2000 pleading.

notice to the Board did not mention the condemnation action. In a pleading filed with the court in the condemnation action on November 27, 2000, Crown asserted that, 7 days after it filed its exemption notice, the operating authority identified in the notice became effective, and that thus the condemnation proceeding should be dismissed on the ground that the court lacks subject matter jurisdiction. Crown asserted that the track is a rail line and that the City's proposed condemnation is therefore precluded by our jurisdiction over rail lines.

By petition filed on December 15, 2000, the City requests that we reopen and revoke the exemption. The City argues that the notice was void ab initio under 49 CFR 1150.32(c) because Jefferson failed to notify the Board of the condemnation action. The City argues that Jefferson had a duty to disclose the condemnation action because that suit had the potential to negate Jefferson's ownership of the property as of the date that the condemnation action was filed. The City also argues that there is no "federal interest" in the property because the property has not been used for rail transportation for at least the last 13 years. The City argues that the proposed rail operations are a sham, designed solely to frustrate the condemnation action by invoking preemptive federal jurisdiction.

On December 18, 2000, Jefferson replied in opposition to the City's request for revocation.[4] Jefferson denies that its actions are part of a contrived plan to preempt the City's condemnation action. Rather, Jefferson claims that Crown has been working toward developing a short line rail operation for years and has expended substantial capital on the project in acquiring neighboring property and conducting various studies and preparing working plans for the rail facility. It maintains that it did not attempt to mislead the Board by failing to mention the condemnation proceeding. Jefferson asserts that it was not required by Board regulations to address this matter and that, because the condemnation action involves state property law beyond our purview, it saw no reason to do so. Jefferson further argues that, even if we revoke the exemption, this would not assist the City in any way in its condemnation proceeding because of the existence of the rail line on the property. Jefferson claims that the line has never been authorized for abandonment and therefore remains subject to Board jurisdiction. Accordingly, Jefferson maintains that the City could proceed with its condemnation action only if we were to authorize abandonment of the line.

In a decision issued on December 20, 2000, the Wayne County (Michigan) Circuit Court denied Crown's motion for dismissal of the condemnation action based on the alleged lack of

[4] Jefferson also supplemented its reply on December 20, 2000.

subject matter jurisdiction.[5] On December 27, 2000, Jefferson/Crown submitted a supplemental pleading stating that it intends to appeal the lower court's decision.[6]

On January 2, 2001, the City replied. The City claims that, as a result of the circuit court's decision, title to the subject property vested in the City of Detroit as of April 18, 2000, the date the condemnation action began. This result, the City maintains, underscores why the notice of exemption was misleading and void ab initio for its failure to disclose the pending condemnation proceeding, which had the potential to, and ultimately did, strip Jefferson of ownership of the property.

In a response filed on January 8, 2001, Jefferson asks us to reject the City's reply filed on January 2, 2001, as a prohibited reply to a reply under 49 CFR 1104.13(c). Alternatively, Jefferson requests that, if we accept the City's pleading, we also consider Jefferson's simultaneously tendered response. In this response, Jefferson argues that the existence of a pending condemnation action concerning the property on which it would operate does not bear on the statutory exemption criteria of 49 U.S.C. 10502. Jefferson also argues that revocation of the exemption would "impede interstate commerce" by facilitating the condemnation of property that has "historically been used for rail transportation."

We will accept the City's January 2, 2001 response. Although the City's pleading is a reply to a reply, we have discretion to accept such a pleading where, as here, it contains material that adds to our understanding of the issues. Our acceptance of the City's pleading will not be prejudicial to Jefferson because we will also accept and consider its response.

DISCUSSION AND CONCLUSIONS

Preemption under the amended Interstate Commerce Act (the Act) is quite broad. See 49 U.S.C. 10501(b); City of Auburn v. STB, 154 F.3d 1025 (9th Cir. 1998), cert. denied, 527 U.S. 1022 (1999). That is because Congress has made a determination that the national interest in the free flow of goods in interstate commerce should take precedence over the narrower interests of state and local jurisdictions. Thus, the operations of bona fide railroads are insulated from many of the burdens that can be imposed on other businesses by state and local regulation. However, it

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[5] In that decision, in City of Detroit v. Crown Enterprises, Inc., Case No. 00-01266-CC, the court noted that Crown had not conducted any activities related to rail transportation at the time the condemnation process began, and that no railroad facilities currently exist on the subject parcel of land. The court also noted that the City stipulated that its acquisition of the property would be subject to a right-of-way for this track. In a separate decision issued the same day, the court granted the City's motion for summary disposition.

[6] On March 7, 2001, Jefferson/Crown submitted a follow-up letter relating further developments in the judicial system.

is not at all clear that this case involves bona fide railroad operations so as to take precedence over non-rail uses of the property.

Under the licensing provisions of 49 U.S.C. 10901, a noncarrier (such as Jefferson) may acquire and operate a rail line only if the Board makes an express finding that the proposal is not inconsistent with the "public convenience and necessity." That means that the Board must examine and weigh the public interest. There are instances, however, where full regulatory scrutiny is not necessary, and so, under 49 U.S.C. 10502 and 49 CFR 1121, any party may request an exemption from the otherwise applicable regulatory provisions, on the grounds that full regulatory scrutiny is not necessary to carry out the national transportation policy and that either the exemption is limited in scope or regulation is not needed to protect shippers from an abuse of market power. Moreover, there are some types of situations in which approval would be so routine that we now have a "class exemption" allowing parties to obtain Board authorization subject only to an after-the-fact Board review if objections are received.[7] Thus, under our regulations at 49 CFR 1150.31, a noncarrier can obtain approval to acquire and operate a line of railroad within 7 days,[8] subject to that authority being later revoked (if our regulatory scrutiny is found to be necessary)[9] or treated as void ab initio (if the exemption notice is found to have contained false or misleading information).[10]

The class exemption procedures were adopted to serve shipper and community interests by facilitating continued rail service, on lines that the selling carrier could no longer operate profitably, by new, smaller carriers seeking to provide service more efficiently. See Class Exemption, 1 I.C.C.2d at 812-13, 817. The procedures were not intended to apply to cases in which a noncarrier seeks to convert what could be non-rail property into a rail line.

Here, there is ample basis to question whether what Jefferson acquired was a rail line. The City states, and Jefferson does not deny, that rail service has not been provided over this track for 13 years. It may be, as Jefferson claims, that this track was a rail line that could not be removed without regulatory permission, and that a common carrier obligation thus remains attached to the property and would devolve upon Jefferson if it were allowed to become a rail carrier. But it may well be instead that this was ancillary trackage that was properly taken out of

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[7] See Association of Am. Railroads v. STB, 161 F.3d 58, 61 (D.C. Cir. 1998) ("With publication delays, the public and employees might receive their first notice of the expedited transaction after the sale went through.").

[8] See Class Exemption — Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 812 (1985) (Class Exemption).

[9] 49 U.S.C. 10502(d).

[10] See 49 CFR 1150.32(c).

service without any need for regulatory permission,[11] as to which the common carrier obligation was thus extinguished long ago. These are substantial factual and legal issues, and under the particular circumstances presented here, we will revoke the exemption, so that any further proceedings (should Jefferson choose to pursue its proposal) would be handled under a more searching process—either through a petition for an individual exemption under 49 CFR 1121, or a full application under 49 CFR 1150—designed to elicit a more complete record.

Additionally, we are troubled by Jefferson's failure to disclose that the property was about to be condemned. This failure lends credence to the City's allegation that the proposal that Jefferson submitted to this Board was merely a device to acquire or retain property for non-rail purposes using federal preemption as a shield. The timing and failure to inform us of the condemnation proceedings suggest an effort by Crown and Jefferson to use our exemption process to insulate the property from the condemnation process by invoking our jurisdiction to bolster Jefferson's claim that the property is a rail line beyond the reach of state or local condemnation authority.[12] We will not permit our processes to be misused in that manner. See The Land Conservancy of Seattle & King County — Acquisition & Operation Exemption — The Burlington Northern & Santa Fe Ry. Co., STB Finance Docket No. 33388 (STB served Sept. 26, 1997) (Board will revoke an exemption "[t]o protect the integrity of our processes").[13] Thus, Jefferson's actions provide further basis for revoking its notice of exemption.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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[11] See 49 U.S.C. 10906 (formerly 49 U.S.C. 10907(b)) (excepting spur, industrial, team, switching and side tracks from the requirement of 49 U.S.C. 10903 for regulatory permission to abandon or discontinue service over any part of a rail line).

[12] Similar issues have been raised in another proceeding involving Crown and its affiliates. See Riverview Trenton Railroad Company — Acquisition and Operation Exemption — Crown Enterprises, Inc., STB Finance Docket No. 33980 (petition to revoke exemption filed Feb. 16, 2001).

[13] See also ICC v. American Trucking Ass'ns, 467 U.S. 354, 364-65 (1984) (agency has inherent authority to protect its statutory processes from abuse); Permian Basin Area Rate Cases, 390 U.S. 747, 780 (1968) (agency can take action that is imperative for the achievement of the statute's ultimate purpose).

It is ordered:

1. The petition to revoke the exemption in this case is granted.

2. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary